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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/518,314

12/16/2004

Karl Freudelsperger

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EXAMINER

GREENHUT, CHARLES N

ART UNIT

PAPER NUMBER

3652

MAIL DATE

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/518,314	<b>Applicant(s)</b> FREUDELSPERGER, KARL	
	<b>Examiner</b> CHARLES N. GREENHUT	<b>Art Unit</b> 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and 2 is/are allowed.
- 6) ☒ Claim(s) 3-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 December 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **I Request for Continued Examination**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/7/07 has been entered.

## **II Claim Objections**

1. In claim 12, Line 15, "said central" should read - - said central belt - -.

## **III Claim Rejections - 35 USC § 112**

The following is a quotation from the relevant paragraphs of 35 U.S.C. 112:

(2) The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 3-11, 13 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
  - 1.1. With respect to claim(s) 3, and 13 the phrase, "said second articles being transferred to said dispatching station, or to said central belt for further filling with said first articles, or to said removing track" requires transport to any of these location in the alternative only, however, the following limitation, "said removing track conveying said containers filled with second articles" is not recited in the alternative case and would require both that the containers be transferred to the removing track and to the central belt, but not necessarily the discharge station. Clarification is required.
  - 1.2. With respect to claim(s) 3, lines 21-22, Applicant recites "said first container [which is associated with the first track on the first shelving unit] receiving said first articles," however, only the second articles are recited (C3 Li. 12-13) and disclosed (PP [0029]) as being on the shelving units. So it appears that the *first container* should be receiving - -said second articles *from* said first shelving unit - -, and the *second* container (Li. 24-25) should be receiving - -said second articles from said second shelving unit - -. Clarification or correction is required.

## **IV Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

Art Unit: 3652

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim(s) 12-13, is/are rejected under 35 U.S.C. 102(b) as being anticipated by YUYAMA (US 5,832,693 A).

1.1. As best understood by Examiner, with respect to claim(s) 12-13 YUYAMA discloses, providing shelves (60/80) a plurality of containers (T), a central belt (21-belt conveyors), central belt commissioning device (U), dispatch station (X), conveying tracks (30/40) forming a commissioning path on the right and left and extending parallel to (e.g., a width of) central belt (21), having containers (T), first articles (A) transportable by the central belt (21), second articles (B) on shelves (80) not transportable by the central belt (21), transferring second articles (B) from shelves (80) into containers (T), automatically moving first articles (A) from a location above the central belt (21) to a location on the belt (via U), transporting containers (T) with second articles (B) to the dispatch station (X), transferring first articles (A) from central belt (21) to a stationary container (50) at an end of the central belt (21), when containers with second articles (B) are transported to the dispatch station (X).

#### **V Allowable Subject Matter**

1. Claims 1-2, and 14 are allowed. Claims 3-11 and 15 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

1.1. With respect to claim(s) 1 and 3, while YUYAMA and other references teach the general concept of combining articles for an order picked via different methods, the relative locations and orientations of the components as detailed in the language of claims 1 and 3 is not taught or fairly suggested by the prior art of record.

#### **VI Response to Applicant Arguments**

Applicants arguments entered 12/7/07 have been fully considered.

1. Applicant argues that the claims, as amended, are not anticipated nor rendered obvious by YUYAMA. Applicant's arguments are persuasive with respect to claims 1 and 3 but not with respect to claim 12.

#### **VII Conclusion**

1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles N. Greenhut whose telephone number is (571) 272-1517. The examiner can normally be reached on 6:30am - 3:00pm EST.

2. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey can be reached at (571) 272-6916. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

3. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained

Art Unit: 3652

from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CG

/Saúl J. Rodríguez/

Supervisory Patent Examiner, Art Unit 3652